

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

REBECCA N. PETERS-MONE and	)	Civil Action No. 4:06-cv-1326
STACEY J. DALBEC, individually and as	)	
class representatives,	)	
	)	
Plaintiffs,	)	<b>DEFENDANT VANDERBILT</b>
	)	<b>MORTGAGE AND FINANCE, INC.’S</b>
vs.	)	<b>RESPONSE TO APPLICATION FOR</b>
	)	<b>INTERIM APPOINTMENT AS CLASS</b>
CLAYTON HOMES INC. and	)	<b>COUNSEL</b>
VANDERBILT MORTGAGE AND	)	
FINANCE, INC.,	)	
	)	
Defendants.	)	
	)	
	)	

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Defendant Vanderbilt Mortgage and Finance, Inc. (hereinafter “VMF”), pursuant to Local Civil Rule 7.06 DSC, respectfully submits this response to the Application for Interim Appointment as Class Counsel (the “Application”) filed by David H. Breen.

VMF submits that the Application is premature, as plaintiffs’ counsel has failed to demonstrate the need for such an interim designation. The Advisory Committee Notes to the 2003 amendments to Rule 23 of the Federal Rules of Civil Procedure state that the Court may “designate interim counsel during the pre-certification period if necessary to protect the interests of the putative class.” Fed. R. Civ. P. 23, Advisory Committee Notes to 2003 Amendments (emphasis added). Plaintiffs’ counsel has failed to allege why the requested appointment is necessary at this time.

The Advisory Committee Notes further clarify that this amendment to Rule 23 was intended to address those cases in which “there may be rivalry or uncertainty that make formal designation of interim counsel appropriate.” *Id.* However, the “[f]ailure to make the formal designation does not prevent the attorney who filed the action from proceeding in it.” *Id.* In this case, plaintiffs’ counsel has made no allegation or forecast of any “rivalry or uncertainty” to justify the requested interim appointment, nor has he demonstrated that he cannot proceed to the certification stage of the case without it. For these reasons, the Application is premature.

VMF expressly reserves the right to object to and oppose any subsequent motion for appointment as class counsel under Rule 23(g)(1) of the Federal Rules of Civil Procedure.

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